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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1128

UNITED STATES EX REL. WILLIAM A. DOSS,
Petitioner,

vs.

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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INDEX.

PAGE

Table of Contents.

Petition for Writ of Certiorari 1

I. Short Statement and Summary of Matters Involved 2

II. Statement of Jurisdictional Grounds 3

III. Questions Presented; Specifications of Errors 7

Brief and Argument in Support of Petition for Writ of Certiorari; Reasons Relied on for Allowance of Writ 11

Appendix 23

Cases Cited.

American Manufacturing Co. v. City of St. Louis, 250 U. S. 459 21

Atkinson v. Detroit Free Press, 46 Mich. 341 6

Bridges v. State of California, 314 U. S. 252.....3, 5, 7, 17

Budd Mfg. Co. v. National Labor Relations Board, 142 Fed. (2) 922 5

Doss, In re, 367 Ill. 570 17

Doss v. Lindsley, 53 Fed. Supp. 427 3

Doss v. Lindsley, ... Fed. (2d) ..... (1945)..... 3

Doss v. People, 321 U. S. 789..... 2

Hawk, Ex Parte, 321 U. S. 114.....18, 19

Howard v. Fleming, 191 U. S. 126..... 21

Johnson v. Zerbst, 304 U. S. 458..... 15

Mooney v. Holohan, 294 U. S. 103 1
People v. Doss, 318 Ill. App. 387 2
People v. Doss, 384 Ill. 400 2
People v. Zimmerman, 278 U. S. 63 11
West Virginia State Board of Education v. Barnette, 319 U. S. 624 ..... 14, 16
Whitney v. California, 274 U. S. 357 5
Williams, Ex Parte, 217 U. S. 604 20

STATUTES.

Judicial Code of the United States, Sec. 240(a) 3, 23
R. S., Illinois, March 27, 1874, P. 348, Div. 3, Sec. 12.. 20
Smith-Hurd Annotated Statutes, Illinois, C. 38, Sec. 402 ..... 3, 5
Smith-Hurd Annotated Statutes, Illinois, C. 38, Sec. 620 20

MISELLANEOUS.

Constitution of the United States, First Amendment.. 4
Constitution of the United States, Fourteenth Amendment 4
Constitution of the State of Illinois, Article II, Sec. 4. 4
Count 1, Indictment of W. A. Doss 12
Count 2, Indictment of W. A. Doss 23

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E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes your petitioner, William A. Doss, *pro se*, respectfully praying that a writ of certiorari issue to review a decision of the United States Circuit Court of Appeals for the Seventh Circuit, its docket No. 8627, entered on the seventh day of February, A. D. 1945, in which petition for rehearing was denied on March 14, 1945, affirming the judgment of the District Court of the United States, for the Eastern District of Illinois, denying his petition for writ of habeas corpus against the Sheriff of Piatt County, Illinois, and remanding him to the custody of that officer.

I.

Short Statement and Summary of Matters Involved.

The petitioner was convicted of criminal libel in the Circuit Court of Piatt County, Illinois, under an old statute of that state. This law is printed on page 12 hereof. It also appears in full at page 47 of the Record. The alleged libel consisted, in essence, of the charge that the State's attorney of Piatt County "is not a fair and impartial prosecutor" (R. 3), followed or accompanied by specific statements and allegedly illustrative cases intended to support the general allegation (post, Brief, pp. 12-13). From this conviction petitioner appealed to the Appellate Court, which sustained the Circuit Court. *People* v. *Doss*, 318 Ill. App. 387. Petitioner then applied to the State Supreme Court for a writ of error to the Appellate Court. The Supreme Court affirmed the Appellate Court. *People* v. *Doss*, 384 Ill. 400. This Court, on undisclosed grounds, denied a petition for certiorari to the Supreme Court of Illinois. *Doss* v. *People*, 321 U. S. 789.

At every stage and in the State courts (R. 5; *People* v. *Doss*, 384 Ill. 440, 405), this petitioner challenged the judgment of the Circuit Court of Piatt County, on the ground that the so-called criminal libel statute as interpreted and applied in his case was and is an unconstitutional infringement upon the rights of free speech and a free press under the First and Fourteenth Amendments to the United States Constitution and as expounded in the decisions of this Court. The attitude of the Supreme Court of Illinois is illustrative of the cavalier style in which his position on this important question was answered. At page 405 of the State report (384 Ill.), the court said:

> "It is next urged by defendant that the constitutional rights of freedom of speech and freedom of the press

are involved in this cause and that defendant has been deprived of these rights. This argument is without merit. * * * While defendant had the right to publish on all subjects, he is responsible for the abuse of that privilege. He cites as authority the case of *Bridges* v. *State of California,* 314 U. S. 252, but from a reading of that case it is apparent it does not apply here."

Having pressed the fundamental question on freedom of expression in this case in all the courts of Illinois, this petitioner applied to the United States District Court for a writ of *habeas corpus.* His petition was denied by the District Judge in a very brief opinion, which gave no consideration to the constitutional questions which this petitioner has raised at every stage and in every court (R. 19; *Doss* v. *Lindsley,* 53 F. Supp. 427). This decision is partly based on a holding by the same judge in *Doss* v. *Lindsley,* 53 Fed. Supp. 427, which was a contempt case. On February 7, 1945, the Circuit Court of Appeals for the Seventh Circuit affirmed the District Court, filing a short opinion. That court also denied a petition for a rehearing on March 14, 1945 (R. 40).

II.

Statement of Jurisdictional Grounds.

The discretionary power and the jurisdiction of this Court to grant a writ of certiorari are invoked on the following grounds, which are believed to be substantial for the reasons stated and in view of the cases cited:

1. The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code of the United States. This statute is set out in the Appendix.

2. Sec. 402, C. 38, Smith-Hurd An. Stat. of Illinois, being the so-called criminal libel statute of that State, is

an unconstitutional infringement of the rights of free speech and free press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. This statute is set forth on page 12 of this petition.

3. The instant proceeding is a cause wherein final judgment rendered by the Supreme Court of the State of Illinois, being the highest Court of that State in which a decision could be had, draws in question the validity of a statute of the State of Illinois, on the ground that it is repugnant to the Constitution and laws of the United States.

4. The instant proceeding is a cause wherein also the final judgment rendered by the United States District Court for the Eastern District of Illinois and a final judgment by the United States Circuit Court of Appeals for the Seventh Circuit draw in question also the validity of the State statute, on the ground that it is repugnant to the Constitution and laws of the United States.

5. The instant proceeding involves a right, privilege and immunity specifically set up and claimed by the petitioner under the Constitution of the United States and the Federal Bill of Rights.

6. The decision of the Supreme Court of the State of Illinois abridges the right of free speech and freedom of the press as defined and granted by the Constitution of the United States, Amendment I (Bill of Rights), and the Fourteenth Amendment, and by the Constitution of the State of Illinois, Article II, Section 4.

7. The decisions of the courts of the State of Illinois and of the lower federal courts concurring therein show a total disinclination or inability to apply or grasp the fundamental principles, as stated by this Court, in the light of which the constitutional guaranties of free expression under the first and the fourteenth amendments to the United

States Constitution are to be reconciled in any given case with substantial social interests which, when there is a conflict, are paramount. That only great and present danger to paramount public interest justifies restrictions on free speech and a free press the lower courts, State and federal, is ignored.

8. The criminal libel statute (Smith-Hurd An. Stat., C. 38, Sec. 402), as construed by the courts below, State and federal, and the language of Count I of the indictment which the lower courts hold is such as to warrant a restriction upon the right of free expression, impose restrictions upon free expression in violation both of the guaranties on the subject in the United States Constitution and of principles clearly announced by this Court in several cases. The holding of the Supreme Court of Illinois renders nugatory the provisions of the Bill of Rights of the Federal Constitution (Amendment I) and the XIV Amendment, Section 1, and the Constitution of the State of Illinois, Article II, Section 4, guaranteeing to the petitioner the right of freedom of speech and of the press, and is in conflict with the decisions in the following cases: *Harry Bridges* v. *State of California*, 314 U. S. 252 (1941); *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board* (1942); 142 Fed. (2d) 922, 928; and *Whitney* v. *California*, 274 U. S. 357, where Justice Brandeis, concurring, said at page 376:

> "Fear of serious injury cannot justify suppression of free speech * * * there must be reasonable ground to believe that the danger apprehended is imminent * * * that the evil to be prevented is a serious one. * * * But even advocacy of violation (of law), however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement. * * * In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated. * * * Prohibition of free speech and assembly is a

measure so stringent that it would be inappropriate as a means of averting a relatively trivial harm to society. A police measure may be unconstitutional merely because the remedy, although effective as a means of protection, is unduly harsh or oppressive. * * * There must be the probability of serious injury to the state."

9. The statements and excerpts from the Liberty Press published by this petitioner, which were made the basis of the criminal libel prosecution in the State court, were indubitably made in forceful and unequivocal language. The Constitutional guarantee of free speech and free expression, however, does not compel insipidity in presenting the truth. Thus, petitioner is wholly unable to improve upon the language of Judge Cooley on this subject, when he said:

"The beneficial ends to be subserved by public discussion would in large measure be defeated if dishonesty must be handled with delicacy and fraud spoken of with such circumspection and careful and deferential choice of words as to make it appear in the discussion a matter of indifference. * * * Who would venture to expose a swindler or a blackmailer, or to give in detail the facts of a bank failure or other corporate defalcation, if every word and sentence must be uttered with judicial calmness and impartiality as between the swindler and his victims, and every fact and every inference be justified by unquestionable legal evidence! The undoubted truth is that honesty reaps the chief advantages of free discussion; and fortunately it is honesty also that is least liable to suffer serious injury when the discussion incidentally affects it unjustly. * * * The law, justly interpreted, is not chargeable with the inconsistency of tempting conductors of the press with a deceptive pretence of liberty and then punishing them in damages if they act upon the assumption that the liberty is genuine."

Atkinson v. *Detroit Free Press Co.*, 46 Mich. 341, 382, 383, 384.

Petitioner was convicted of criminal libel under an indictment in two counts, pursuant to a statute of the State of Illinois set out in full on page 12 of the brief under Specification of Error No. 3.

The indictment contained two counts, fully set forth on pages 12-13 of the brief and argument of Specification of Error No. 3.

The jury acquitted on count II, but convicted on count I.

The opinions of the lower courts, state and federal, do not discuss or state the standards laid down by this Court in *Bridges* v. *State of California,* 314 U. S. 252, and other cases, in the light of which it must be determined whether the conduct of an accused presents such a great and present danger to a paramount public interest as will justify restricting the right of free expression. We think the petitioner has been denied certain fundamental rights, secured him by the Constitution of the United States. *No court has so far discussed the fundamental question whether there was a public interest in this case paramount to the right of free expression,* for the exercise of which this petitioner now faces imprisonment.

III.

Questions Presented; Specifications of Errors.

1. The court erred in asserting (R. 37) that the petitioner did not urge in his petition in the lower court the issues that he was deprived of the freedoms of speech and of press in violation of the U. S. Constitution, for he did urge this point (R. 3, par. 10).

2. The court erred in ignoring the question whether the so-called criminal libel law of the State of Illinois, as applied and interpreted by the Illinois courts and the Federal District Court was a restriction upon the "freedom of

speech and of press" which was and is unconstitutional since it does not appear from anything in the record that a "paramount public interest" required or justified this restriction on free speech and a free press.

3. The court erred (R. 39) in assuming without analysis or examination of the words held criminally libelous and of the applicable decisions of this Court, that the question before the court was whether it could, in a habeas corpus proceeding, "review * * * the question of whether there was evidence to support the verdict" under the criminal libel act. No one asked the court to "review the evidence" for this or any other purpose. The court was asked—and this question it neither discussed nor answered—to determine whether the *words* in the *indictment*, upon which the whole case was grounded, were such that they could not be said or written, in the circumstances of this case, in the exercise of rights guaranteed this petitioner by the First and the Fourteenth Amendments to the Constitution of the United States.

4. It was error to hold that since petitioner had not specifically asked for a writ of habeas corpus in the State courts, he could not come into the federal courts, in view of the undisputed fact that all the Illinois courts had passed adversely on the specific and precise question on which his right to habeas corpus in the State courts would turn. The concept that the law does not require idle or useless acts has been applied in countless situations. It must be obvious that the ruling would be exactly the same and that the Supreme Court of Illinois would not stultify itself by changing its ruling on the same point because petitioner changed the *name* of the *proceeding*. On this question and on analogous facts, *this* Court *has never ruled*.

5. It was error, if the court so intended, to hold that the petitioner was not under restraint when he applied to

the District Court for the writ. He was restrained by his bondsmen (R. 12) who held him for the sheriff. It was more than mere *moral* restraint. The respondent does not deny that the petitioner is under restraint.

6. It was error to hold that the State courts correctly held the petitioner subject to imprisonment under the criminal libel statute of the State.

Respectfully submitted April 14, 1945.

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Attorney for Petitioner.